BORA LASKIN LAW LIBRARY
3 1761 10631453 7

MUNICIPAL AND PLANNING LAW

S.M. Makuch

VOLUME II

1983-1984

with the assistance of
Philip Tunley

Faculty of Law
University of Toronto

KF
2678
.A4
N3
1923
v.2

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

LIBRARY USE ONLY

LAW LIBRARY
NOV 15 1983
FACULTY OF LAW
UNIVERSITY OF TORONTO

MUNICIPAL AND PLANNING LAW

S.M. Makuch

VOLUME II

1983-1984

with the assistance of

Philip Tunley

Faculty of Law

University of Toronto

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/municipalplannin02maku

MUNICIPAL AND PLANNING LAW

Table of Contents

PART II

CHAPTER V

INTRODUCTION TO PLANNING

Introduction 429

A. The Origins and Theory of Planning 430

J. Jacobs, "The Death and Life of Great American Cities" 430

Note 434

W.I. Goodman, et., "Principles and Practice of Urban Planning" 435

Note 442

Greenspan & Vaughan, "How the Zoning Game is Played: A Look at Land Use Procedures" 442

S. Proudfoot, "Private Wants and Public Needs: The Regulation of Land Use in the Metropolitan Toronto Area" 444

B. The Municipal Role in Planning and The Official Plan 446

(i) Introduction 446

Ontario Economic Council, "Subject to Approval" 446

Note 450

(ii) The Official Plan and Conformity 450

Re Cadillac Development Corporation and City of Toronto 451

Holmes et al. v. Regional Municipality of Halton 456

Notes and Questions 457

(iii) The Limits of Official Plans 459

Re Official Plan of Richmond Hill Planning Area 459

Re Borough of Scarborough and the Minister of Housing for Ontario 460

(iv) Metropolitan or Regional Official Plans 465

Campeau Corporation v. Township of Gloucester 465

Notes 468

C. The Provincial Role in Planning 469

White, "Ontario's Land Use Legislation" 469

Notes 473

Union Gas Ltd. v. Corporation of Dawn 473

Notes 476

CHAPTER VI

THE PRIVATE CONTROL OF LAND USES

Introduction 477

A. Restrictive Covenants 478

Tulk v. Moxhay 478

London County Council v. Allen 479

Notes
- Stilwell v. Blackman
- Shepherd Homes Ltd. v. Sandham 484
- Earl of Leicester v. Wells U.D.C.
- Wrothan Park Estate v. Parkside Homes

One Twenty-Five Varsity Road Ltd. v. Twp. of York 485

Note 488

Re Sekretov and City of Toronto 489

Re Hart et al. and Harrietsfield-Grand Lake Community Association 492

Note 494

B. Building Schemes 495

Hyett, "Restrictive Covenants: An Appraisal of Building Schemes" 495

Megarry & Wade, The Law of Real Property 497

MacGregor et al. v. Boyd Builders Ltd. et al. 500

Scharf v. Mac's Milk Ltd. 503

Notes 505

C. Modification of Restrictive Covenants 507

Re Beardmore 507

Re Beardsley's Application 509

D. Nuisance 510

Walker v. McKinnon Industries 510

Cairns v. Canada Regining & Smelting Co. 514

Gertsen v. Municipality of Metropolitan Toronto 516

Spur Industries Inc. v. Del E. Webb Dev. Co. 519

Bottom v. Ontario Leaf Tobacco Co. Ltd. 522

CHAPTER VII

ZONING AND LAND USE CONTROL

A. Introduction to Zoning 525

"Houston Looks for a Heat" The Boston Globe 525

Makuch, "Zoning: Avenues of Reform" 526

Note 528

B. The Scope of The Zoning Power 528

(i) Exclusionary Zoning and the Scope of the Zoning Power 528

Village of Euclid v. Ambler Realty Co. 533

Notes 533

R. v. Brown Camps Ltd. 535

Notes and Questions 538

City of Barrie v. Brown Camps Residential and Day Schools 539

Notes and Questions 544

R. v. Bell (O.C.A.) 546

R. v. Bell (S.C.C.) 552

Notes and Questions 558

Current Dilemmas and Legal Issues in "Housing For All Under Law" 561

Notes and Questions 567

C. Discrimination and Zoning 568

City of Toronto v. Mandelbaum 568

Note 570

Scarborough Township v. Bondi 570

Notes and Questions 573

H. G. Winton v. Corporation of the Borough of North York 574

Re Twp. of North York Restricted By-Law 578

Notes and Questions 581

D. Bad Faith 584

Re Cadillac Development Corp. and City of Toronto 584

Re Wall & Redekop Corp. Ltd. and City of Vancouver 586

City of Halifax v. Hollet et al. 589

H. G. Winton v. Corporation of the Borough of North York 594

Notes and Questions 595

E. The Administration of Zoning By-Laws 596

Polai v. City of Toronto 596

Notes and Questions 598

F. Prohibiting All Uses 598

R. v. Gibson ex parte Cromiller 598

Corporation of the City of Coquitlam v. Karamanolis 599

Note 600

G. Planning and Land Value 601

i) The Common Law Position 601

Romanica v. Greater Winnipeg Water District 601

Note 605

Belfast Corporation v. O.D. Cars Ltd. 605

Notes 611

ii) The Current Canadian Position 611

Regina Auto Court v. City of Regina 611

Re Simpson and City of Vancouver 613

Rodenbush v. Corporation of the District of North Cowichan 618

Hauff v. City of Vancouver 620

Note 622

H. Negligence 623

Dorschell v. City of Cambridge 623

Barratt v. District of North Vancouver 625

Nielsen v. City of Kamloops et al. 628

Welbridge Holdings Ltd. v. Metropolitan Corporation of Greater Winnipeg 631

Bowen et al. v. City of Edmonton (No. 2) 635

Note 640

Inland Feeders v. Virdi 641

CHAPTER VIII

ZONING REFORMS AND DEVELOPMENT CONTROL

Introduction 647

A. Limitations on Zoning 648

Re Mississauga Golf and Country Club 648

Notes and Questions 651

Town of Uxbridge v. Timber Brothers Sand and Gravel Ltd. 652

Note 654

Makuch, "Zoning: Avenues of Reform" 655

B. Reform of Zoning 660

Soo Mill & Lumber Co. Ltd. v. City of Sault Ste. Marie 661

Sanbay Developments Ltd. v. City of London 665

Notes and Questions 668

Papolis v. Corporation of the Borough of Scarborough 670

Letter on Holding By-law and Development Control 672

Note 678

Re Walmar Investments and City of North Bay 679

Re Sorokalit & Mississauga 680

C. Section 40 of The Planning Act 685

Canadian Institute of Public Real Estate Companies et al. v. Corporation of the City of Toronto (Div. Ct.) 685

Canadian Institute of Public Real Estate Companies et al. v. Corporation of the City of Toronto (S.C.C.) 690

Notes and Questions 693

240953 Developments Ltd. et al. v. Corporation of the City of Hamilton 694

Re City of Toronto By-Law 234/75 695

Pepino "Site Plan Control Procedure" 698

Notes 700

D. Section 33 of The Planning Act 702

A. W. Banfield Construction Ltd. v. City of Oshawa 702

Note 704

E. Lot Levies 705

Hudec, "Municipal Exactions and the Subdivision Approval Process: A Legal and Economic Analysis" 705

Note 713

Re Mills and Land Division Committee of York 714

Notes and Questions 717

Re Steel Co. of Canada and City of Nanticoke 717

Notes and Questions 721

Pinetree Development Co. Ltd. v. Minister of Housing for Ontario 722

Re Frey and Regional Municipality of Peel Land Division Committee 727

Re Glenworth Homes 730

Notes 733

CHAPTER IX

PRE-EXISTING RIGHTS OF LANDOWNERS

THE RIGHT TO A BUILDING PERMIT

Introduction 734

A. Ontario 735

(i) The Basic Rule 735

City of Ottawa v. Boyd Builders 736

Note 741

(ii) A Pre-existing Intent 742

Re Overcomers Church and City of Toronto 742

Notes 747

R. v. City of Barrie, ex parte Bernick 748

Notes and Questions 752

	Re Donald Bye Excavating Co. Ltd. et al and City of Peterborough	752
	Note	754
(iii)	Good Faith	755
	Re Cambridge Leaseholds and City of Toronto (No. 2)	755
	Note	759
	Hall v. City of Toronto and Hadley	760
(iv)	Proceeding with Dispatch	766
	Rethazy et al. v. Corporation of the Town of Lincoln	766
	Re 261532 Development Corp. Ltd. and City of Toronto	769
	Note	770
(v)	The Application Itself	770
	Re David Gallo Building Co. Ltd. and City of Toronto	770
(vi)	The Effect of Development Control	774
	Re Dominion Stores Ltd. and Borough of Etobicoke	774
	Notes	776
(vii)	Other Jurisdictions	777
	(i) Nova Scotia	777
	Re Governors of Dalhousie College & University and City of Halifax	777
	Notes	778
	(ii) British Columbia	778
	Monarch Holdings Ltd. v. Oak Bay	778

CHAPTER X

CONTINUING RIGHTS OF LANDOWNERS

NON-CONFORMING USES

Introduction 783

(i) Defining the Use 784

Central Jewish Institute v. Toronto 784

Note 788

Regina v. Rutherford's Dairy Ltd. 788

Note 790

(ii) Extension or Enlargement of Buildings 791

Re Wilmot and Kingston 791

Notes 796

(iii) Changing Uses 796

R. ex rel. Skimmings v. Cappy 796

Note 798

(iv) Abandonment of Uses 798

Gayford v. Kolodziej et al. 798

O'Sullivan Funeral Home Ltd. v. Corporation of the City of Sault Ste Marie 799

Notes 809

(v) Amortization of Uses 801

City of Los Angeles v. Gage 801

Note 804

(vi) Other Jurisdictions 804

Note 804

CHAPTER XI

PROCESS REQUIREMENTS AND THE MUNICIPALITY

Introduction 805

A. Access to Information 806

Makuch, Jackson, "Freedom of Information in Local Government in Ontario" 806

Notes 814

B. Right to a Hearing 815

(i) Municipal Councils, Police Commissions, and Boards of Education 815

Atkinson et al. v. The Municipality of Metropolitan Toronto 815

Notes 818

Campeau v. Calgary 819

Notes 824

Re Zadrevec and Town of Brampton 824

Re Maple Leaf Mills and Point Edward 829

Notes and Questions 831

(ii) Planning Boards 832

(iii) Minister's Orders 832

Re Orangeville Highlands and A. G. Ontario 832

Notes 834

(iv) Subdivision Agreements 835

Homex Realty and Dev. Co. Ltd. v. Village of Wyoming 835

(v) Committees of Adjustment and Land Division Committees 837

(vi) Nature of the Hearing Required 838

Re McMartin et al. v. City of Vancouver 838

Re Bourque 843

(vii) The Ontario Municipal Board 845

Notes 846

CHAPTER XII

ADMINISTRATIVE REVIEW OF MUNICIPAL ACTION

Introduction 848

A. The Jurisdiction of the Ontario Municipal Board 849

Re Township of North York Restricted By-Law 849

Kuchma v. Rural Municipality of Tache 851

Notes 851

Re Merrens et al. and Municipality of Metropolitan Toronto 852

B. The Ontario Municipal Board as Policy Maker - The Board's View 855

(i) Member's Values 855

Re Vaughan Planning Area Official Plan Amendment 855

Note 858

(ii) Government Policy 858

Re Township of Caledon Official Plan 858

Notes and Questions 861

(iii) Good Planning Principles 862

Re Lord Nelson Hotel 862

Note 865

(iv) Financial & Economic Concerns 865

Re East York By-law 7633 865

Notes 867

Re Etobicoke By-law 14508 867

Note 871

(v) Land Value and Planning 871

Re McGregor and Scarborough 872

Forum: "The Role of the Professions in the Future Environment" in 1974 Law Society of Upper Canada Special Lectures 875

Notes and Questions 876

(vi) Minority Rights 876

Re Toronto Restricted Area By-law 348-73 876

Notes 882

Jowell, "The Limits of the Public Hearing as a Tool of Urban Planning" 885

C. The Ontario Municipal Board as Policy Maker - The Court's View 893

Re Cloverdale Shopping Centre Ltd. and Township of Etobicoke 893

Notes 900

Re Hopedale Developments Ltd. and Town of Oakville 901

Notes 905

Re Township of Innisfil and Township of Vespra et al. (Ont. C.A.) 906

Re Township of Innisfil and Township of Vespra (S.C.C.) 917

Notes 918

D. Petitions to Cabinet 919

Statement by the Prime Minister of Ontario re the Spadina Expressway 919

Question 923

Offman Holdings Ltd. v. A. G. Ontario 923

E. Who Should Make Planning Decisions? 927

Tollefson v. Township of Gloucester 927

Notes 928

"Forum: The Role of the Professions in the Future Environment" 929